

National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

DATE: May 19, 1997

TO: William C. Schaub, Regional Director, Region 7

FROM: Barry J. Kearney, Associate General Counsel, Division of Advice

SUBJECT: Sheet Metal Workers, Local 80<, (SMACNA, Metropolitan Detroit Chapter), Case 7-CE-46

This Section 8(e) case was submitted for advice on whether a provision requiring that all fabrication work be performed within the geographic jurisdiction of the Union (Local 80) evinced a secondary object.⁽¹⁾ In February 1997 during a contract reopener, the instant provision was added to the Local 80 bargaining agreement with SMACNA Detroit Chapter, a multiemployer association, which covers the greater Detroit metropolitan area. Local 80 and SMACNA Detroit state that the instant provision was directed at certain other employers who operate outside of the greater Detroit metropolitan area and thus are not direct signatories to the Local 80-Detroit SMACNA bargaining agreement. More specifically, the instant provision was directed at unionized employers who are signatory to bargaining agreements with Local 80's sister Local 7. It appears that such Local 7 signatory employers are bound by a provision in their own Local 7 bargaining agreements which requires them to observe Local 80 "working conditions" when working on a jobsite within the jurisdiction of Local 80.⁽²⁾

According to Local 80 and SMACNA Detroit, Local 7 signatories have always interpreted their own Local 7 bargaining agreements as requiring payment of Local 80 wages for all work emanating from a jobsite within Local 80's jurisdiction, i.e., even for fabrication work performed off-site back in the Local 7 employer's shop. On the other hand, Local 80 and SMACNA Detroit state that in the past Local 7 signatories had failed to pay Local 80 wages for off-site shop fabrication work. This failure led to the disputed provision in this case. In sum, the disputed provision is intended to require Local 7 employers to perform off-site fabrication work within the geographical jurisdiction of Local 80, making it easier for Local 80 to ascertain whether or not Local 7 employers were in fact paying Local 80 rates for off-site fabrication.

We conclude that the instant charge should be dismissed because it appears that Local 7 itself has not interpreted its bargaining agreement in the same manner as Local 80 and SMACNA Detroit, i.e., has not agreed to be bound by the disputed provision in the Local 80 agreement, and thus has not "entered into" that provision within the meaning of Section 8(e).

SMACNA Detroit asserts that Local 7 and its signatory employers are bound to the disputed provision because they are bound to the provision in their own bargaining agreements, set forth below in note 2, which requires them to abide by Local 80 "working conditions." However, Local 7 itself has announced that it does not interpret its own bargaining agreement in the same manner as Local 80.⁽³⁾ In addition, there is no evidence that Local 80 has attempted to or has successfully enforced this provision against a nonsignatory Local 7 contractor. In sum, this case involves only SMACNA Detroit's and Local 80's bare allegation that Local 7 and its signatory employers are bound to the disputed provision because of Local 80's and SMACNA Detroit's interpretation of the Local 7 bargaining agreement. The charge therefore should be dismissed because there is insufficient evidence that Local 7 and its signatory employers have "entered into" an unlawful agreement.

B.J.K.

¹ The disputed contract language provides:

To protect and preserve for the Building Trades employees covered by this Agreement all work they have performed and all work covered by this agreement, and to prevent any device or subterfuge to avoid the protection and preservation of work; it is agreed that all work requiring fabrication shall be performed by employees hereunder, either in the shop or on the job site within the geographic jurisdiction of the union.

² Local 7 bargaining agreements contain a provision from the national Sheet Metal Workers/SMACNA agreement, Article VIII, Section 5, which provides:

Except as provided in Section 2 & 6 of this article, the Employer agrees that journeymen sheet metal workers hired outside of the territorial jurisdiction of the Agreement shall receive the wage scale and working conditions of the Local Agreement covering the territory in which such work is performed or supervised.

(Emphasis added)

³ In a letter to its own signatory contractors dated March 27, 1997, Local 7 stated that, in its view and the view of the International, the disputed Local 80 provision was "a restriction in trade" and that Local 7 signatories "may continue to operate as you have done in the past regarding any shop fabrication..."